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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,882	09/08/2003	Thomas Hurt	27343.00.8002	2630

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EXAMINER

LUONG, SHIAN TINH NHAN

ART UNIT PAPER NUMBER

3728

DATE MAILED: 08/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	10/657,882	HURT ET AL.	
	Examiner	Art Unit	
	Shian T. Luong	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>12/8/03</u> . | 6) <input type="checkbox"/> Other: ____. |

Claim Rejections - 35 USC § 112

1. Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claims 1, 3, 9 and 10, the term "two of said walls" lacks proper antecedent basis. It is not clear which walls applicant intends to claim. Also in claim 1, the T-flange shaped upper, lower and opposed first and second side panel edge portion in the drawing does not resemble a T-shape. In fact, the drawing in Figure 6 shows the insert with a substantially hour-glass shaped upper edge portion 54 and lower edge portion 56 and two substantially rectangular shaped side panel edge portions 58,60. There is no T-shaped portion in the drawing.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 3 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Lanius (US 4,838,445). Lanius discloses an organizer case comprising a tray 11 having a bottom wall and a plurality of compartment walls formed unitarily with and upstanding from said bottom wall. Two of the compartmental walls extending in parallel relation and space apart a separation distance. The two parallel walls having confronting sidewall faces. The sidewall faces each having a plurality of first joint formers 36 extending in perpendicular relation to the bottom wall. An insert divider 40 extends between sidewall faces. The insert comprising a main wall having

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upper edge, lower edge, and opposed side edge flange portions. The main wall is of flat planar configuration having a generally uniform thickness. The side edge flanges extend in angled relation to the plane of the main wall. The side edge flange portions having a second joint formers 52 for friction fit engagement with the first joint formers. The side edge flange portions being spaced apart a distance greater than the separation distance as shown in Figure 2.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 3,7,8,9,10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese patent 3069109 in view of Spiegel (US 5,390,815). 3069109 discloses an organizer case comprising a having a bottom wall and a plurality of compartment walls formed unitarily with and upstanding from said bottom wall. Two of the compartmental walls extending in parallel relation and space apart a separation distance. The two parallel walls having confronting sidewall faces. The sidewall faces each having a plurality of first joint formers 8 extending in perpendicular relation to the bottom wall. An insert divider 2 extends between sidewall faces. The insert comprising a main wall having upper edge, lower edge, and opposed side edge flange portions. The main wall is of flat planar configuration having a generally uniform thickness. The side edge flange portions having a second joint formers 9 for friction fit engagement with the first joint formers. 3069109 does not disclose an insert divider that has side flange portions

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being spaced apart greater than a distance between the separation distance. However, Spiegel teaches a container with adjustable compartments. The insert divider 50 separates the tray into a variety of compartments. Some are diagonal across from one wall to another and another is straight across from one wall to another as shown in Figure 6. The purpose is to provide different sized compartments in order to accommodate articles of different shapes. Hence, it would have been obvious in view of Spiegel to form some of the divider with diagonal shape body to form different shaped compartments. The distance between the flanges may be at least 20% greater than the separation distance through routine experiments.

Allowable Subject Matter

6. Claims 1, 2, 4-6 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Conclusion

7. Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners, M.P.E.P. 203.08.

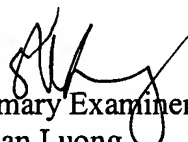
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If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Erica Miller at (571) 272-4370.

For applicant's convenience, the official FAX number is ~~571-273-8300~~. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify Examiner Luong of Art Unit 3728 at the top of your cover sheet of any correspondence submitted.

Inquiries concerning the merits of the examination should be directed to Shian Luong whose telephone number is (571) 272-4557. The examiner can normally be reached on M-H from 7:00am to 4:00pm EST.

STL
August 15, 2005


Primary Examiner
Shian Luong
Art Unit 3728